



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT  
DATED : 31.07.2019

CORAM

**THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN  
AND  
THE HONOURABLE MR.JUSTICE B.PUGALENDHI**

H.C.P (MD) Nos.136 and 138 of 2019

**H.C.P. (MD) No.136 of 2019**

Tamilselvam @ Senthamilselvam

... Petitioner

Vs.

1.The Principal Secretary to the Government,  
State of Tamil Nadu,  
Home, Prohibition and Excise Department,  
Secretariat, Chennai-600 009.

2.The Commissioner of Police,  
Office of the Commissioner of Police,  
Madurai City, Madurai.

3.The Superintendent of Prison,  
Madurai Central Prison,  
Madurai District.

... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the records connected with the detention order of the respondent No.2 in No.04/BCDFGISSSV/2019, dated 22.01.2019 and quash the same and direct the respondents to produce the body or person of the detenu by name Tamilselvan @ Senthamilselvam, son of Marimuthu, aged about 22 years, now detained at Madurai Central Prison before this Court and set him at liberty forthwith.

**H.C.P. (MD) No.138 of 2019**

Vijay

... Petitioner

Vs.

1.The Additional Chief Secretary to Government,  
Home, Prohibition and Excise Department,  
Secretary, Chennai-600 009.



2.The District Collector and District Magistrate,  
Office of the District Collector and District Magistrate,  
Madurai.

3.The Superintendent of Prison,  
Madurai Central Prison,  
Madurai District.

... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the records connected with the detention order of the respondent No.2 in No.03/BCDFGISSSV/2019, dated 22.01.2019 and quash the same and direct the respondents to produce the body or person of the detenu by name Vijay, son of Ramar, aged about 22 years, now detained at Madurai Central Prison before this Court and set him at liberty forthwith.

For Petitioner  
in both petitions : Mr.R.Alagumani

For Respondents  
in both petitions : Mr.K.Chellapandian  
Additional Advocate General  
assisted by  
Mr.K.Dinesh Babu  
Additional Public Prosecutor

**COMMON ORDER**

**(Order of the Court was made by M.SATHYANARAYANAN,J)**

The impugned orders of detention in these Habeas Corpus Petitions came to be passed on the same solitary case and therefore, both Habeas Corpus Petitions are taken up and are disposed of by this common order.

2. Both the detenus, challenging the impugned orders of detention, dated 22.01.2019, passed by the second respondent, under Section 3(1) of Dangerous Activities of Bootleggers, Drug-offenders, Forest-offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) and branded them as 'Goondas' in No.04/BCDFGISSSV/2019 and No.03/BCDFGISSSV/2019 respectively, have filed the present Habeas Corpus Petitions.

3. In H.C.P.(MD)No.136 of 2019, the order of detention came to be passed on the solitary case, registered by D2 Sellur Police Station, in Cr.No.1684 of 2018, for the commission of offence under Section 302 I.P.C., and the occurrence is said to have been happened on 14.10.2018 at about 23.30 hours.



4. In H.C.P.(MD)No.138 of 2019, the detenu came to adverse notice in the following case:

**Cr.No.2402 of 2017** on the file of D2 Sellur Police Station, under Sections 147, 294(b), 323, 387, 506(ii) I.P.C., altered into 294(b), 323, 387, 506(ii) I.P.C.

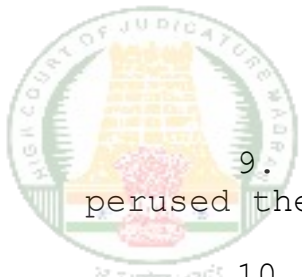
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5. Both the detenus had surrendered before the Court of Judicial Magistrate, Nilakottai, Dindigul District on 16.10.2018 and they were produced before the Court of Judicial Magistrate No.II, Madurai on 16.10.2019 and they were remanded to judicial custody on the same day and subsequently, they were taken under police custody on 26.10.2018 and again they were produced before the Court of Judicial Magistrate No.II, Madurai on 28.10.2018 and were remanded to judicial custody till 09.11.2018 and it was further extended upto 01.02.2019.

6. The detaining authority, on being satisfied with the materials placed by the sponsoring authority that the activities of the detenus are prejudicial to the maintenance of public order, clamped the orders of detention and making a challenge to the same, the present Habeas Corpus Petitions have been filed by the petitioners.

7. The learned Counsel appearing for the petitioners has drawn the attention of this Court to page No.133 of the booklet and would submit that the learned Judicial Magistrate No.II, Madurai has passed remand extension order dated 09.11.2018 and the contents of the said order would disclose that A.1 to A.4, which including these detenus were seen through video conference and their period of remand was extended till 09.11.2018, 23.11.2018, 07.12.2018, 21.12.2018 and 04.01.2019. The primordial submission made by the learned Counsel appearing for the petitioner is that the head clerk attached to the said Court had issued a certified copy by putting the signature on 05.01.2019 and the fact remains that the Judicial Magistrate has signed the said order on 09.11.2018 and the order was passed on 09.11.2018 and it would not be possible to mention the subsequent date of remand on 23.11.2018, 07.12.2018, 21.12.2018 and 04.01.2019 and in the light of the said discrepancies, the detaining authority should have sought clarification from the sponsoring authority and in the absence of the said material discrepancies, the impugned orders of detention are vitiated and hence, prays for quashment of the same.

8. Per contra, the learned Additional Public Prosecutor appearing for the State has drawn the attention of this Court to the counter affidavit filed by the second respondent and would submit that the detaining authority, on proper application of mind, has taken into consideration all the materials and the report submitted by the sponsoring authority, has passed the detention orders and hence, prays of dismissal of the Habeas Corpus Petitions.



9. This Court has considered the rival submissions and perused the materials placed before this Court.

10. A perusal of the remand extension order, signed by the learned Judicial Magistrate No.II, Madurai, on 09.11.2018 and the certified copies of the same signed by the head clerk on 05.01.2019, would disclose that subsequent to the signature of learned Judicial Magistrate No.II, on 09.11.2018, the remand extensions, through video conference, were made on 23.11.2018, 07.12.2018, 21.12.2018 and 04.01.2019 respectively. The subsequent orders of remand on four dates, after 09.11.2018, creates some confusion, for the reason that the remand extension order was said to have been signed by the learned Judicial Magistrate No.II, Madurai on 09.11.2018 and if it is so, the subsequent remand orders, which came to be thereafter, would not have been came to the knowledge of the concerned Presiding Officer. No doubt, the head clerk attached the said Court has also signed in the attested copy of the said order on 05.01.2019 and the said order is also not disclosed that the consolidation of all remand extension orders. In the light of the confusion created, it is obligatory on the part of the detaining authority to seek clarification from the sponsoring authority and admittedly it was not done. In the considered opinion of this Court, the said infirmity would vitiate the impugned orders of detention and therefore, they are liable to be quashed.

11. In the result,

(i) H.C.P.(MD)No. 136 of 2019 is allowed and the order of detention in No.04/BCDFGISSSV/2019 dated 22.01.2019, passed by the second respondent, is quashed and the detenu namely Tamilselvan @ Senthamilselvam, son of Marimuthu, is directed to be set at liberty forthwith, unless his remand/detention is required, in accordance with law, in connection with any other case/proceedings.

(ii) H.C.P.(MD)No. 127 of 2019 is allowed and the order of detention in No.03/BCDFGISSSV/2019, dated 22.01.2019, passed by the second respondent, is quashed and the detenu namely Vijay, son of Ramar is directed to be set at liberty forthwith, unless his remand/detention is required, in accordance with law, in connection with any other case/proceedings.

Sd/-  
Assistant Registrar(CO)

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Sub Assistant Registrar



To

- 1.The Principal Secretary to the Government,  
Home, Prohibition and Excise Department,  
Secretariat, Chennai-600 009.
- 2.The Commissioner of Police,  
Office of the Commissioner of Police,  
Madurai City, Madurai.
- 3.The Additional Chief Secretary to Government,  
Home, Prohibition and Excise Department,  
Secretary, Chennai-600 009.
- 4.The District Collector and District Magistrate,  
Office of the District Collector and District Magistrate,  
Madurai.
- 5.The Superintendent of Prison,  
Madurai Central Prison,  
Madurai District.
- 6.The Joint Secretary to Government,  
Public (Law & Order),  
Fort St.George,  
Chennai-600 009.
- 7.The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.

**H.C.P (MD) Nos.136 and 138 of 2019**  
**31.07.2019**

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JM/19.08.2019/5P/8C